

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

LEGACY HEALTH CARE, INC., a Utah corporation,

Plaintiff,

vs.

KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services,

Defendant.

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, DENYING AS MOOT PLAINTIFF'S MOTION FOR STAY PENDING JUDGMENT, AND DENYING DEFENDANT'S MOTION TO STAY PROCEEDINGS

Case No. 1:09-CV-149 TS

This matter is before the Court on Cross Motions for Summary Judgment, Plaintiff's Motion for Stay Pending Judgment, and Defendant's Motion to Stay Proceedings. Plaintiff challenges the validity of Health and Human Services regulation 42 C.F.R. § 418.309(b)(1). Defendant argues that the Court lacks jurisdiction, that Plaintiff lacks standing, and that the

regulation is valid. Defendant also argues that this matter should be stayed pending resolution by the Tenth Circuit Court of Appeals of another case dealing with similar issues.

For substantially the same reasons as a number of other courts,¹ the Court finds that it has jurisdiction, that Plaintiff has standing, and that the regulation is invalid. Based on this overwhelming authority, the Court finds no reason to stay this matter.

It is therefore

ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 16) is GRANTED. It is further

ORDERED that Defendant's Motion for Summary Judgment (Docket No. 34) is DENIED. It is further

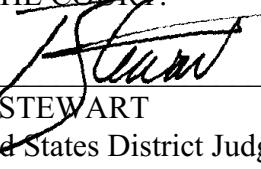
ORDERED that Plaintiff's Motion for Stay Pending Judgment (Docket No. 20) is DENIED AS MOOT. It is further

ORDERED that Defendant's Motion to Stay Proceedings (Docket No. 51) is DENIED.

The hearing set for June 24, 2010, is STRICKEN.

DATED June 15, 2010.

BY THE COURT:



TED STEWART
United States District Judge

¹See *Autumn Light Hospice v. Sebelius*, No. CIV-09-0178-M, 2010 WL 988470 (W.D. Okla. Mar. 12, 2010); *Tri-County Hospice, Inc. v. Sebelius*, Nos. CIV-08-273-Raw & CIV-09-407-Raw, 2010 WL 784836 (E.D. Okla. Mar. 8, 2010); *Hospice of N.M., LLC v. Sebelius*, No. CIV 09-00145 RB-LFG, 2010 WL 773229 (D. N.M. Mar. 5, 2010); *Lion Health Servs., Inc. v. Sebelius*, No. 4:09-CV-493-A, 2010 WL 637954 (N.D. Tex. 2010).